

Frank V. Carlow and Michael Carlow d/b/a Carlow's Ltd. and Service Employees International Union Local 585, AFL-CIO. Case 6-CA-15135

March 4, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

Upon a charge filed on December 3, 1981, and amended on January 26, 1982, by Service Employees International Union Local 585, AFL-CIO, herein called the Union, and duly served on Frank V. Carlow and Michael Carlow d/b/a Carlow's Ltd., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 6, issued a complaint on January 27, 1982, against Respondent, and an amendment to the complaint on July 14, 1982, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint as amended alleges in substance that, from 1948 to November 1980, G.P.S. Investors Company, hereafter G.P.S., was engaged in the management, operation, and rental of an office building known as the Fayette National Bank Building in Uniontown, Pennsylvania, recognized the Union as the exclusive collective-bargaining representative of an appropriate unit of its custodial and maintenance employees, and was a party to successive collective-bargaining agreements, the most recent of which was effective until December 31, 1981. The complaint further alleges that in November 1980 Respondent purchased the assets of G.P.S., including the Fayette National Bank Building, and has, since that date, engaged in the same business operations at the same location employing as a majority of its custodial and maintenance employees individuals previously employed by G.P.S. in the recognized unit. The complaint further alleges that Respondent is thereby a successor employer to G.P.S., that the custodial and maintenance employees constitute an appropriate unit, that the Union is the exclusive collective-bargaining representative of the unit employees, and that since November 23, 1981, Respondent has failed and refused to recognize and bargain collectively as successor to G.P.S., although the Union is requesting it to do so. The complaint alleges that Re-

spondent, by the foregoing conduct, has violated Section 8(a)(5) and (1) of the Act.

On February 10, 1982, Respondent filed an answer to the complaint admitting in part, and denying in part, the allegations in the complaint. As to certain of the allegations denied, Respondent, the Union, and the General Counsel entered into a stipulation on July 15, 1982, as to facts regarding the effects of Respondent's operations on interstate commerce. Respondent admits, *inter alia*, that it is a successor to G.P.S., that a majority of its custodial and maintenance unit employees were previously employed by G.P.S., and that it has refused to bargain with the Union upon request. Respondent denies, however, that upon termination of the collective-bargaining agreement between G.P.S. and the Union on December 31, 1981, that it has had any duty to recognize or bargain with the Union.

On August 23, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, together with exhibits. She submits, in effect, that by virtue of Respondent's admissions, as a matter of law, Respondent has violated Section 8(a)(5) and (1) of the Act. Subsequently, on August 27, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent filed an answer in opposition to the General Counsel's Motion for Summary Judgment which the Board has treated as a timely filed response to its Notice To Show Cause of August 27, 1982.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

As indicated above, Respondent has admitted in its answer and in the stipulation all facts necessary to establish the Board's jurisdiction in this proceeding, the Union's status as the exclusive bargaining representative of certain employees in an appropriate unit, and Respondent's successorship to G.P.S.

¹ On September 30, 1982, the Board issued a Decision and Order in this proceeding without having considered this answer in opposition. Upon learning of its inadvertent oversight, the Board, on October 13, 1982, issued an Order rescinding its Decision and Order and agreed to consider Respondent's opposition. Thereafter, on December 3, 1982, the Board issued a Notice To Show Cause why Respondent's opposition should not be treated as an amended answer to the complaint thereby raising a factual issue resolvable only through a hearing before an administrative law judge. The counsel for the General Counsel timely filed a response to the Notice To Show Cause. For the purposes of this proceeding we shall treat Respondent's opposition as an amended answer.

It is well settled that a successor employer is obligated to bargain, upon request, with the exclusive representative of the employees of its predecessor, where, as here, a majority of its employees in the appropriate unit were employees of the predecessor and that it continues the same operation, and that a refusal to do so violates Section 8(a)(5) and (1) of the Act.² Accordingly, we shall grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a partnership with its principal office and place of business located in Uniontown, Pennsylvania, and is engaged in the management, operation, and rental of an office building known as the Fayette National Bank Building. During the 12-month period ending December 31, 1981, Respondent derived gross revenues in excess of \$250,000, of which in excess of \$25,000 was derived from U.S. Steel Mining Company, Inc.

U.S. Steel Mining Company, Inc., is engaged in the deep mining and preparation of coal at its Maple Creek mine and preparation plant located near Uniontown, Pennsylvania, and, during the 12-month period ending December 31, 1981, purchased and received at its Maple Creek facility goods, products, and materials valued in excess of \$50,000 directly from suppliers located outside the Commonwealth of Pennsylvania.

We find, on the basis of the foregoing, that Respondent is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Service Employees International Union Local 585, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

² *N.L.R.B. v. Williams J. Burns International Security Services, Inc.*, 406 U.S. 272 (1972).

In its answer in opposition to the General Counsel's Motion for Summary Judgment, Respondent alleges for the first time that in addition to 5 unit employees retained, it "employed 14 additional employees with no union affiliation to perform construction duties." Respondent does not specifically contend that these additional employees should be in the bargaining unit nor does it proffer any evidence which would support such a contention. The Board therefore finds this statement as to Respondent's present work force insufficiently precise to raise a factual issue under *Burns*, particularly in view of Respondent's earlier admission that a majority of its custodial and maintenance employees were employed by G.P.S.

III. THE UNFAIR LABOR PRACTICES

A. *The Union's Status*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All custodial and maintenance employees employed by the Employer at its Uniontown, Pennsylvania, facility (the Fayette National Bank Building); excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

2. The recognition by Respondent's predecessor

From 1948 until November 1980, G.P.S. was engaged in the management, operation, and rental of the Fayette National Bank Building in Uniontown, Pennsylvania. In 1948 the Union was recognized by G.P.S. as the exclusive collective-bargaining representative of the employees in the above-described unit and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act. G.P.S.'s recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from January 1, 1979, to December 31, 1981.

B. *Respondent's Successorship to G.P.S. Investors Company*

In November 1980, Respondent purchased the assets of G.P.S. Investors Company, including the Fayette National Bank Building, and since that date has been engaged in the same business operations, at the same location, renting the same office space to substantially the same tenants, and has as a majority of its custodial and maintenance employees individuals who were previously employees of G.P.S.

C. *The Request To Bargain and Respondent's Refusal*

Commencing on or about November 9 and 23, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about November 23, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive

representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent is the successor to G.P.S. and has, since November 23, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Frank V. Carlow and Michael Carlow d/b/a Carlow's Ltd. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Service Employees International Union Local 585, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All custodial and maintenance employees employed by the Employer at its Uniontown, Pennsylvania, facility; excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since November 1980, Respondent has been and is the successor to G.P.S. Investors Company.

5. The Union was, in November 1980, and has been at all times since, the exclusive bargaining representative of all employees in the aforesaid bar-

gaining unit within the meaning of Section 9(a) of the Act.

6. By failing and refusing at all times since November 23, 1980, to recognize and bargain with the Union as the exclusive bargaining representative of the employees in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Frank V. Carlow and Michael Carlow d/b/a Carlow's Ltd., Uniontown, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Service Employees International Union Local 585, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All custodial and maintenance employees employed by the Employer at its Uniontown, Pennsylvania, facility; excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Uniontown, Pennsylvania, facility copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Service Employees International Union Local 585, AFL-CIO, as the exclusive repre-

sentative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All custodial and maintenance employees employed by the Employer at its Uniontown, Pennsylvania, facility; excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

FRANK V. CARLOW AND MICHAEL
CARLOW D/B/A CARLOW'S LTD.